

ASSEMBLY BILL

No. 2498

Introduced by Assembly Member Gordon

February 24, 2012

An act to add Chapter 6.3 (commencing with Section 6800) to Part 1 of Division 2 of the Public Contract Code, relating to public contracts.

LEGISLATIVE COUNSEL'S DIGEST

AB 2498, as introduced, Gordon. Department of Transportation: Construction Manager/General Contractor project method.

Existing law sets forth the requirements for the solicitation and evaluation of bids and the awarding of contracts by state agencies for the erection, construction, alteration, repair, or improvement of any public structure, building, road, or other public improvement.

This bill would authorize the Department of Transportation to engage in a Construction Manager/General Contractor project delivery method, as specified, for projects for the construction of a highway, bridge, or tunnel.

This bill would require specified information to be verified under oath, thus imposing a state-mandated local program by expanding the scope of an existing crime.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

SECTION 1. Chapter 6.3 (commencing with Section 6800) is added to Part 1 of Division 2 of the Public Contract Code, to read:

CHAPTER 6.3. CONSTRUCTION MANAGER/GENERAL
CONTRACTOR AUTHORITY: DEPARTMENT OF TRANSPORTATION

6800. (a) This chapter provides for an alternative procurement procedure for certain building transportation projects performed by the Department of Transportation.

(b) It is the intent of the Legislature in enacting this chapter to enable the utilization of a Construction Manager/General Contractor method as a cost-effective option for constructing transportation projects.

(c) The Legislature finds and declares that utilizing a Construction Manager/General Contractor method requires a clear understanding of the roles and responsibilities of each participant in the process. The Legislature also finds and declares that cost-effective benefits are achieved by shifting the liability and risk for cost containment and project schedule to the construction manager and by permitting the coherent phasing of projects into discrete contract increments.

6801. The Construction Manager/General Contractor method provided by this chapter may be used, but is not limited to, when it is anticipated that it will reduce project costs or expedite project completion in a manner that is not achievable through the design-bid-build method.

6802. As used in this chapter, the following terms have the following meanings:

(a) "Construction manager" means a partnership, corporation, or other legal entity that is able to provide appropriately licensed contracting and engineering services as needed pursuant to a Construction Manager/General Contractor method contract.

(b) "Construction Manager/General Contractor method" means a project delivery method in which a construction manager is procured to provide preconstruction services during the design phase of the project and construction services during the construction phase of the project. The contract for construction services may be entered into at the same time as the contract for

1 preconstruction services, or at a later time. The execution of the
2 design and the construction of the project may be in sequential
3 phases or concurrent phases.

4 (c) "Department" means the Department of Transportation as
5 established under Part 5 (commencing with Section 14000) of
6 Division 3 of the Government Code.

7 (d) "Project" means the construction of a highway, bridge, or
8 tunnel.

9 6803. Construction Manager/General Contractor method
10 projects shall progress as follows:

11 (a) (1) The department shall establish a procedure for the
12 evaluation and selection of a construction manager through a
13 request for qualifications (RFQ). The RFQ shall include, but not
14 be limited to, the following:

15 (A) If the entity is a partnership, limited partnership, or other
16 association, a list of all of the partners, general partners, or
17 association members known at the time of the bid submission who
18 will participate in the Construction Manager/General Contractor
19 method contract, including, but not limited to, subcontractors.

20 (B) Evidence that the members of the entity have completed,
21 or demonstrated the experience, competency, capability, and
22 capacity to complete projects of similar size, scope, or complexity,
23 and that proposed key personnel have sufficient experience and
24 training to competently manage and complete the construction of
25 the project, as well as a financial statement that assures the
26 department that the entity has the capacity to complete the project,
27 construction expertise, and an acceptable safety record.

28 (C) The licenses, registration, and credentials required to
29 construct the project, including information on the revocation or
30 suspension of any license, registration, or credential.

31 (D) Evidence that establishes that the entity has the capacity to
32 obtain all required payment and performance bonding, liability
33 insurance, and errors and omissions insurance.

34 (E) Any prior serious or willful violation of the California
35 Occupational Safety and Health Act of 1973, contained in Part 1
36 (commencing with Section 6300) of Division 5 of the Labor Code,
37 or the federal Occupational Safety and Health Act of 1970 (Public
38 Law 91-596), settled against any member of the entity, and
39 information concerning workers' compensation experience history
40 and worker safety program.

1 (F) Information concerning any debarment, disqualification, or
2 removal from a federal, state, or local government public works
3 project. Any instance in which an entity, its owners, officers, or
4 managing employees submitted a bid on a public works project
5 and were found to be nonresponsive, or were found by an awarding
6 body not to be a responsible bidder.

7 (G) Any instance in which the entity, or its owners, officers, or
8 managing employees, defaulted on a construction contract.

9 (H) Any violations of the Contractors' State License Law
10 (Chapter 9 (commencing with Section 7000) of Division 3 of the
11 Business and Professions Code), excluding alleged violations of
12 federal or state law including the payment of wages, benefits,
13 apprenticeship requirements, or personal income tax withholding,
14 or of the Federal Insurance Contributions Act (26 U.S.C. Sec.
15 3101, et seq.) withholding requirements settled against any member
16 of the entity.

17 (I) Information concerning the bankruptcy or receivership of
18 any member of the entity, including information concerning any
19 work completed by a surety.

20 (J) Information concerning all settled adverse claims, disputes,
21 or lawsuits between the owner of a public works project and any
22 member of the entity during the five years preceding submission
23 of a bid pursuant to this section, in which the claim, settlement, or
24 judgment exceeds fifty thousand dollars (\$50,000). Information
25 shall also be provided concerning any work completed by a surety
26 during this period.

27 (K) In the case of a partnership or other association that is not
28 a legal entity, a copy of the agreement creating the partnership or
29 association and specifying that all partners or association members
30 agree to be fully liable for the performance under the contract.

31 (L) For the purposes of this paragraph, a construction manager's
32 safety record shall be deemed acceptable if his or her experience
33 modification rate for the most recent three-year period is an average
34 of 1.00 or less, and his or her average total recordable injury/illness
35 rate and average lost work rate for the most recent three-year period
36 does not exceed the applicable statistical standards for its business
37 category or if he or she is a party to an alternative dispute resolution
38 system as provided for in Section 3201.5 of the Labor Code.

39 (2) The information required pursuant to this subdivision shall
40 be verified under oath by the entity and its members in the manner

1 in which civil pleadings in civil actions are verified. Information
2 that is not a public record pursuant to the California Public Records
3 Act (Chapter 3.5 (commencing with Section 6250) of Division 7
4 of Title 1 of the Government Code) shall not be open to public
5 inspection.

6 (b) For each RFQ, the department shall generate a final list of
7 qualified persons or firms that participated in the RFQ prior to
8 entering into negotiations on the contract or contracts to which the
9 RFQ applies.

10 (c) (1) For each contract included in the RFQ, the department
11 shall enter into separate negotiations for the contract with the
12 highest qualified person or firm on the final list for that contract.
13 However, if the RFQ is for multiple contracts and specifies that
14 all of the multiple contracts will be awarded to a single construction
15 manager, there may be a single negotiation for all of the multiple
16 contracts. The negotiations shall include consideration of
17 compensation and other contract terms that the department
18 determines to be fair and reasonable to the department. In making
19 this decision, the department shall take into account the estimated
20 value, the scope, the complexity, and the nature of the professional
21 services or construction services to be rendered. If the department
22 is not able to negotiate a satisfactory contract with the highest
23 qualified person or firm on the final list, regarding compensation
24 and on other contract terms the department determines to be fair
25 and reasonable, the department shall formally terminate
26 negotiations with that person or firm. The department may
27 undertake negotiations with the next most qualified person or firm
28 on the final list in sequence until an agreement is reached or a
29 determination is made to reject all persons or firms on the final
30 list.

31 (2) If a contract for construction services is entered into pursuant
32 to this chapter and includes preconstruction services by the
33 construction manager, the department shall enter into a written
34 contract with the construction manager for preconstruction services
35 under which contract the department shall pay the construction
36 manager a fee for preconstruction services in an amount agreed
37 upon by the department and the construction manager. The
38 preconstruction services contract may include fees for services to
39 be performed during the contract period provided, however, the
40 department shall not request or obtain a fixed price or a guaranteed

1 maximum price for the construction contract from the construction
2 manager or enter into a construction contract with the construction
3 manager until after the department has entered into a services
4 contract. A preconstruction services contract shall provide for the
5 subsequent negotiation for construction of all or any discrete phase
6 or phases of the project.

7 (3) A contract for construction services shall be awarded after
8 the plans have been sufficiently developed and either a fixed price
9 or a guaranteed maximum price has been successfully negotiated.
10 In the event that a fixed price or a guaranteed maximum price is
11 not negotiated, the department shall not award the contract for
12 construction services.

13 (4) The department is not required to award the construction
14 services contract.

15 (5) Construction shall not commence on any phase, package,
16 or element until the department and construction manager agree
17 in writing on either a fixed price that the department will pay for
18 the construction to be commenced or a guaranteed maximum price
19 for the construction to be commenced and construction schedule
20 for the project. The construction manager shall perform not less
21 than 30 percent of the work covered by the fixed price or
22 guaranteed maximum price agreement reached. Work that is not
23 performed directly by the construction manager shall be bid to
24 subcontractors pursuant to Section 6805.

25 6804. (a) Any construction manager that is selected to
26 construct a project pursuant to this chapter shall possess or obtain
27 sufficient bonding to cover the contract amount for construction
28 services and risk and liability insurance as the department may
29 require.

30 (b) Any payment or performance bond written for the purposes
31 of this chapter shall be written using a bond form developed by
32 the department.

33 6805. All subcontractors bidding on contracts pursuant to this
34 chapter shall be afforded the protections contained in Chapter 4
35 (commencing with Section 4100) of Part 1. The construction
36 manager shall do all of the following:

37 (a) Provide public notice of the availability of work to be
38 subcontracted in accordance with the publication requirements
39 applicable to the competitive bidding process of the department.

1 (b) Provide a fixed date and time on which the subcontracted
2 work will be awarded in accordance with the procedure established
3 pursuant to this chapter

4 (c) Comply with any subcontracting procedures adopted by the
5 department that were included in the department's RFQ. If the
6 department has adopted procedures to prequalify public works
7 contractors, the construction manager may use the procedures to
8 prequalify subcontractors.

9 6806. The department may retain the services of a design
10 professional or construction project manager, or both, throughout
11 the course of the project in order to ensure compliance with this
12 chapter.

13 6807. Contracts awarded pursuant to this chapter shall be valid
14 until the project is completed.

15 6808. Nothing in this chapter is intended to affect, expand,
16 alter, or limit any rights or remedies otherwise available at law.

17 SEC. 2. No reimbursement is required by this act pursuant to
18 Section 6 of Article XIII B of the California Constitution because
19 the only costs that may be incurred by a local agency or school
20 district will be incurred because this act creates a new crime or
21 infraction, eliminates a crime or infraction, or changes the penalty
22 for a crime or infraction, within the meaning of Section 17556 of
23 the Government Code, or changes the definition of a crime within
24 the meaning of Section 6 of Article XIII B of the California
25 Constitution.